

**MEMORANDUM OF AGREEMENT
CONCERNING FUNDING SECTION 106 AND OTHER PROJECT REVIEWS
AT THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
HISTORIC PRESERVATION OFFICE**

This Memorandum of Agreement (MOA) between the New Jersey Department of Transportation (NJDOT) and the New Jersey Department of Environmental Protection (NJDEP) revises certain terms and conditions of an MOA executed on May 19, 1993 and amended in January, 1995 on NJDOT funding of staff in the Historic Preservation Office (HPO) of NJDEP. The continuation of funding is beneficial to both agencies as it will guarantee dedicated NJDEP staff time towards NJDOT Section 106 and other project reviews, provide predictable review of time frames and ensure consideration of historic preservation issues during project development.

TERMS OF THIS AGREEMENT

1. HPO will complete project reviews in accordance with the provisions of Section 106 of the National Historic Preservation Act of 1966, as amended; its most recent implementing regulations and the New Jersey Register of Historic Places Act.
2. HPO will streamline the review process by limiting reviews and requests for information to only that which is essential to the execution of Section 106 regulatory requirements. Per the internal agreement between HPO and NJDOT, executed June 19, 1998 [attached], HPO staff will increase their participation in early project planning in order to enhance consideration of cultural resources in the early stages of the project development process, and to facilitate and maintain project schedules.
3. HPO will respond to all NJDOT consultation requests within 30 calendar days unless otherwise mutually agreed to be placed on hold. Thirty days will commence on the date HPO receives the project. For NJDOT initiated projects, completed project reviews will be faxed to the person requesting the review and the secretary to the Manager, BES. For the purposes of the logging systems, the completion date will correspond to the date the response is received by fax by the secretary to the Manager, BES. The HPO and NJDOT will maintain a project logging system to monitor compliance with 30 calendar day response commitment, projects placed on hold, outstanding interagency commitments and projects responded to in less than thirty days. During the first week of each month, the HPO will submit a current list of outstanding project reviews to the Manager, BES. NJDOT and HPO will schedule periodic meetings to review project status.
4. HPO and NJDOT will participate in the development of programmatic methodologies to increase the efficiency of the review process.

5. HPO staff will periodically work at NJDOT in order to facilitate project scoping and project reviews. NJDOT will provide a workstation, including computer, e-mail and telephone for HPO staff use. Initially, one HPO staff member will work at NJDOT one day per week according to a schedule established and provided to NJDOT by the first day of each month. The efficacy of this approach will be evaluated by HPO and NJDOT after six months and, if mutually acceptable, the schedule adjusted as needed.
6. HPO will provide quarterly reports and invoices to the Manager, Bureau of Environmental Services (BES) according to the following schedule:

Period 7/1/98 - 9/30/98	Report & Invoice by 10/31/98
Period 10/1/98 - 12/30/98	Report & Invoice by 1/30/99
Period 1/1/99 - 3/31/99	Report & Invoice by 4/30/99
Period 4/1/99 - 6/30/99	Report & Invoice by 8/15/99

The report and invoice will contain at least the following:

- HPO Schedule Sheets
- HPO Fiscal Summary as generated by NJDEP (Grants Management)
- HPO Quarterly Performance Summary (verbal summary of accomplishments/project reviews including numbers of projects completed within the 30 day review period; number of projects requiring more than 30 days for review; a listing of projects placed on hold; number of Transportation Enhancement, Local Lead and other project reviews; number of project meetings/field reviews for projects managed by the Bureau of Preliminary Scope Development, etc. Summary may include tables or graphs to visually display information as appropriate.)
- Brief Year-to-Date Performance Summary

Upon receipt of a complete package, NJDOT-BES will submit the invoice for payment within 15 calendar days.

REIMBURSEMENT:

Reimbursement shall be up to \$200,000 per State Fiscal Year at the actual salary rate and limited to actual labor hours attributable to specific NJDOT projects and functions. NJDEP will submit quarterly invoices showing actual hours worked on specific NJDOT projects and functions in accordance with the stipulations in number six above. NJDEP will maintain and submit time sheet detail and other necessary backup to support all charges, which are now subject to post-audit by the State Auditor. Payment to NJDEP will be made by a certificate of Debit/Credit.

PERFORMANCE REVIEW:

Ninety days prior to the end of Fiscal Year 1999, or on March 1, 1999 NJDOT will review NJDEP performance under the terms of the agreement and advise NJDEP of its intent to extend the agreement for the next fiscal year. If NJDOT and HPO agree on the terms of renewal, a new agreement shall be executed within the first thirty days (by July 31, 1999) of the new fiscal year.

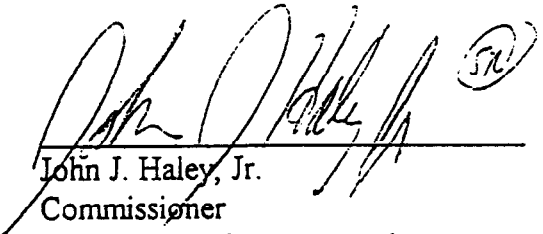
TERMINATION:

Should both agencies agree to terminate the agreement, HPO will notify NJDOT within thirty days of any changes with regard to staff reassignment and/or work considerations.

EXTENSION/MODIFICATION OF AGREEMENT:

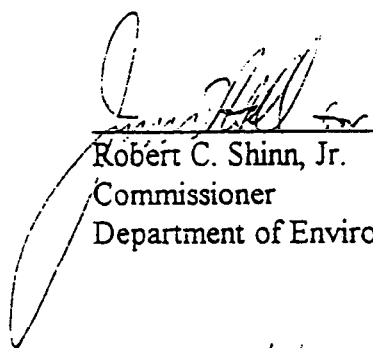
This agreement will remain in effect from the date of execution through the end of State Fiscal Year 1999 (June 30, 1999). The agreement may be extended to cover additional fiscal years and/or be modified upon approval of both signatories.

SIGNATURES:


John J. Haley, Jr.
Commissioner
Department of Transportation

Date

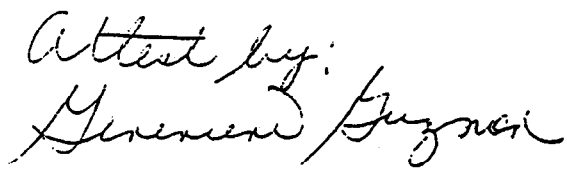
9/16/98


Robert C. Shinn, Jr.
Commissioner
Department of Environmental Protection

Date

9/16/98


JACQUELINE TRAUSI
SECRETARY
Department of Transportation

Attest by:

GENEVEVE GUZMAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 3, 2001

NJDEP-SHPO/NJDOT Coordination During Project Scope Development

MEMORANDUM OF UNDERSTANDING

Statement of Intent

The intent of this Understanding between the NJDEP-SHPO and NJDOT is as follows:

- A. To begin coordination as early in the scoping process as practicable and foster interagency cooperation in the public's best interest.
- B. To enhance the value of both NJDOT's project scope development process and the SHPO's review for compliance with the applicable State and/or Federal cultural resource statutes and regulations.
- C. To identify and recognize that other environmental constraints (in addition to cultural resources) factor into the development and recommendation of project alternatives, and that, in some cases there may be conflicting constraints
- D. To cooperatively develop project concepts and alternatives which are sensitive to cultural resources and other environmental constraints, and which satisfy the project need.
- E. To reasonably ensure that when a preferred alternative is identified during the Feasibility Assessment phase of Scoping, it will not significantly change during Final Scope Development and Final Design.
- F. Perhaps the most important aspect of this "Understanding" is that both NJDOT and NJDEP agree to follow an *iterative process*, as appropriate to the specific proposed action, to comply with the Federal and State statutes and regulations. The iterative nature of this process will allow for the identification of potentially significant cultural resources, eligibility determinations and potential impacts on a "step-by-step" basis, as project alternatives are developed and analyzed during the Scoping process. This will allow us to assess and dismiss certain alternatives that may have a "fatal flaw", without the need to have all the technical cultural resource work completed beforehand. Substantial time and cost savings could potentially be realized by both agencies.
- G. Recognize that the *Guidelines for Interagency Coordination Process*, (contained herein) are flexible and may need to be revised based on actual experience. Together, we will establish a "track record" of how the process has worked over the course of one year. After one year, both agencies agree to reevaluate the process and make adjustments as needed.

Guidelines for Interagency Coordination Process:

1. At the beginning of the Feasibility Assessment phase, the Bureau of Project Scope Development (BPSD) requests the Bureau of Environmental Services (BES) to screen project for potential cultural resources involvement.
2. If BES indicates that no cultural resources are apparent, then the SHPO will be requested to

comment on this preliminary finding.

3. If the project appears to have potential for cultural resources involvement, then the Group Manager will invite a representative from the SHPO to the Scope Meeting and NJDEP- SHPO will be included as a member of the Scoping Team.

4. Site inspections of the potential project area will be coordinated with NJDEP-SHPO.

5. Generally, the NJDEP-SHPO will advise the Scoping Team concerning:

- a) potential cultural resource impacts and /or constraints
- b) alternatives to avoid/minimize impacts
- c) whether State and/or Federal regulations and documentation requirements are applicable
- d) if the reasoning which established the Problem Statement/Project Need is convincing.
- e) what mitigation measures would be likely to comply with State and /or Federal regulations
- f) if the project has potential for *significant* impacts and/or controversy regarding Sec. 106 or State Historic Sites Council regulations.
- g) if there are locally recognized organizations or interested parties that should be consulted.

6. Agreement on specific design concepts or other issues which can be used to assist in the future completion of the Sec. 106 or State regulatory requirements will be documented and included as part of the project's administrative record.

7. If necessary, additional steps (perhaps even all the steps) under the Sec. 106 process may be completed to determine the Feasibility of the project or a specific alternative, so that a decision can be made whether or not to advance the project into Final Scope Development.

8. All reasonable measures will be taken to develop an Initially Preferred Alternative which addresses the concerns of the NJDEP-SHPO and community, and which reasonably meets the project need.

9. When a project is advanced into the Final Scope Development phase, consultation with NJDEP-SHPO will continue as necessary to satisfy NEPA, Sec. 106, Executive Order 216 or Historic Sites Council requirements.

10. Each agency will participate in this coordination process in keeping with their respective "Rights and Responsibilities".

Rights and Responsibilities of NJDEP-State Historic Preservation Officer and NJDOT-Bureau of Project Scope Development -

SHPO - Rights:

1. To be provided with a written description of the existing conditions, Problem Statement, project need, proposed improvements and community reaction.

2. To be provided with a project's preliminary scheme and reason for its selection, alternative

analyses, mapping and traffic information, as well as additional information as appropriate.

3. Have full opportunity to provide comments and recommend changes to preliminary design schemes and have input concerning selection of a preferred alternative.

SHPO - Responsibilities:

1. Will be available to participate in the project scope development consistent with project schedules and within a reasonable time frame following a request by NJDOT.

2. Will have representatives taking part in the scoping process that are empowered to make commitments while attending meetings and/or field inspections. If there are issues which cannot be resolved at this level, they will be elevated to senior management within each Department for joint resolution.

3. Will objectively address NJDOT questions/concerns regarding significance and boundaries of cultural resources and/or constraints; and work with NJDOT to understand the project need or a preferred alternative.

4. Once a mutually agreeable preferred alternative is determined, support that alternative through the State and/or Federal regulatory processes, unless significant new factors become known through public involvement.

5. Will advise NJDOT of all applicable State/federal cultural resources regulations and anticipated mitigation measures (including any which may be needed from other State or federal agencies) and work with NJDOT to develop reasonable alternatives which will comply with such regulations.

6. Will advise NJDOT of any pending legislation or proposed regulations which may have an effect on the project and will disclose any known or potential environmental issues so that all reasonable alternatives can be assessed during the project scope development.

NJDOT - Rights:

1. Since this process will not be appropriate for all projects, NJDOT will make the initial decision on which projects would benefit from early coordination with the SHPO during project scope development.


2. Will make the final decision on the recommendation of a preferred alternative or preliminary design scheme after considering input from FHWA (as needed), local officials, residents and the SHPO.

3. If necessary, revise the preferred alternative or preliminary design scheme when new or more detailed information is developed during the scoping/design process. The SHPO will be informed of any changes that could affect a project's "footprint".

NJDOT Responsibilities :

1. For appropriate projects, NJDOT will initiate consultation with the SHPO during Feasibility Assessment in a timely manner so that the SHPO's input can be factored into scoping decisions. The Bureau of Project Scope Development will request assistance from the Bureau of Environmental Services as an integral part of SHPO coordination.
2. Will provide the SHPO with a written description of the existing conditions, Problem Statement, project need, proposed improvements and community reaction, as well as a preliminary scheme and reason for its selection, alternative analyses, mapping and traffic information, and additional information as appropriate.
3. Will objectively consider potential alternatives identified through consultation with SHPO.
4. Will work with the SHPO to understand cultural resource impact concerns and/or constraints; and will objectively address SHPO questions/concerns regarding traffic, safety, design requirements or other engineering issues.
5. Will have staff involved that are empowered to make decisions and commitments to the SHPO. If there are issues which cannot be resolved at this level they will be elevated to senior management at both departments for resolution.
6. Will assess and make recommendations to implement reasonable design criteria or propose project "footprint" changes to avoid/ minimize impacts to cultural resources.

FOR NJDEP - HISTORIC PRESERVATION OFFICE :


Dorothy Guzzo,
Deputy State Historic Preservation Officer

Date 6-19-98

FOR NJ DEPARTMENT OF TRANSPORTATION :


Timothy F. McGough, Director

Date 5/14/98